

# QUID NOVI

McGill University, Faculty of Law  
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# GAAP

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# QUID NOVI

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**Envoyez vos commentaires ou articles avant jeudi 5pm à l'adresse: quid.law@mcgill.ca**

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Contributions should preferably be submitted as a .doc attachment.

# EDITORIAL

Riots over blasphemous cartoons depicting the Prophet Muhammad broke out in India, Indonesia, Kashmir, Palestine, Thailand, the autonomous Somali region of Puntland, and Afghanistan—where 11 demonstrators were killed, at least 4 of them by NATO troops. A Taliban commander offered 100 kilograms of gold to anyone who killed those responsible for the cartoons. Other anti-Muhammad-cartoon protests were held in London and Philadelphia. U.N. Secretary General Kofi Annan called on newspapers to stop re-publishing the drawings, and U.S. President George W. Bush condemned the riots but also criticized publishers. "With freedom," said the President, "comes the responsibility to be thoughtful about others."

Author Michael Crichton received a journalism award from the American Association of Petroleum Geologists for his novel *State of Fear*, which criticizes the theory of global warming. "It is fiction," said a spokesman for the petroleum geologists, "but it has the absolute ring of truth."

In Iraq 11 people died in attacks, 8 people were killed by a suicide bomber, and Saddam Hussein was forced to return to court. "This is not a court," he said, "this is a game."

Dean Nicholas Kasirer noted in an interview with the McGill Reporter that he hopes trans-systemic legal education at McGill will encompass religious and aboriginal legal traditions over the coming generation.

The U.S. Air Force, under pressure from evangelical Christians, changed its religious tolerance guidelines to allow for religious intolerance. Doctors in Israel said that Ariel Sharon was unlikely to wake up.

-- From Harper's Week in Review and the McGill Reporter



# AVEUGLE JUSTICE?

**Itinérance : Quand les lois traduisent l'incapacité d'une société à s'accepter elle-même**

by Christopher Campbell-Duruflé (Law I)

**A**vez-vous déjà gêné la circulation sur la voie publique, en y flânant ou en y déposant un sac ? Traité avec l'occupant d'un véhicule à partir de la chaussée ? Traversé un chemin public à un autre endroit qu'une intersection ? Utilisé le mobilier urbain à une autre fin que celle à laquelle il est destiné ? Été dans un parc en dehors de ses heures d'ouverture ?

Probablement, mais cela vous-a-t-il valu un constat d'infraction ? Une amende de 120\$ ?

On peut comprendre l'importance de réglementation qui assure l'ordre et la paix sur la voie publique. Mais comment expliquer que cette réglementation, comme le démontre la Dr. Céline Bellot dans ses récents travaux, ait été utilisée quatre fois plus à l'égard des personnes itinérantes en 1994 qu'en 2004 ? Chercheuse au Centre international de criminologie comparée de l'Université de Montréal, sa récente étude "La judiciarisation des populations itinérantes à Montréal (1994-2004)" dresse le premier portrait des 22 685 constats d'infractions remis sur dix ans à 4036 jeunes et adultes de la rue. Le système judiciaire aide-t-il ces personnes ?

Le décalage de la judiciarisation

Le Forum sur la judiciarisation des personnes itinérantes, tenu à Montréal le 3 février dernier, a réuni intervenants de rue, chercheurs et juristes

unanimes sur l'absurdité de la judiciarisation de ces personnes déjà en difficulté. Pierre Gaudreau, coordonnateur du Réseau d'aide aux personnes seules et itinérantes de Montréal (RAPSIM), souligne la contribution de la population en général (résidents, commerçants et usagers du centre-ville) à l'utilisation répressive et discriminatoire de la loi par les forces de l'ordre. Et la gentrification du centre-ville (et son discours du "pas dans ma cour") fait pression auprès élus municipaux chaque fois que les policiers se montrent plus tolérants.

Une fois le premier constat d'infraction émis, délivré en vertu des règlements municipaux, de ceux de la STM, du Code de la sécurité routière ou du Code criminel, la machine se met en route et les ennuis commencent. La Dr Bellot souligne que l'amende initiale de 120\$ triple en moyenne, habituellement pour atteindre 371\$, rien qu'en frais de procédure, qui s'étend habituellement sur près de 5 ans ! Une entorse à cette dernière, une récidive, et les choses empirent et l'amende gonfle, pour atteindre des sommes surréalistes lorsqu'on a rien dans les poches. Telle est l'importance de connaître ses droits, souligne Bernard St-Jacques, responsable de l'Opération Droits Devant (une initiative du RAPSIM), qui œuvre à l'information juridique des intervenants et des personnes itinérantes et à

la sensibilisation de la population. Mais comment convaincre une personne itinérante de l'importance pour elle d'aller à la Cour municipale lorsqu'il a le sentiment d'être victime d'une contravention arbitraire et discriminatoire ?

Égaux devant la loi ?

Certains avocats n'hésitent pas à remettre en question cette instrumentalisation des règlements pour des fins autres que celles pour lesquelles ils ont été écrits. Me Noël Saint-Pierre, par exemple, souligne qu'un recours en vertu de la Charte canadienne des droits et libertés (art. 15) serait pensable pour mettre fin à leur application discriminatoire, qui semble faire une distinction quant à l'âge et au groupe social des individus. Me Dominique Larochelle (Aide juridique de Montréal) propose quant à elle une plus grande imputabilité des poursuivants pour ces infractions, où les frais pour le système dépassent habituellement les frais réclamés. Placer le fardeau de la justification de l'intervention et de la condamnation sur les élus municipaux et les cours provoquerait une application plus équitable de ces règlements. La profession juridique a donc elle aussi une responsabilité de prévenir un "emballement du système".

Regarder différemment

Les sommes exigées aux gens de la rue par la société se chiffrent souvent en milliers de dollars et s'écouleront lentement par des travaux communautaire et souvent au prix de 25\$/jour de prison. Voulons-nous vraiment réprimer leur marginalisation ? Après l'échec successif de nos institutions (scolaires, sociales, économiques, médicales...) dans leurs cas, pourquoi les pousser dans le système judi-

ciaire et les transformer en criminels ? Comme le concluait France Labelle (Refuge des Jeunes de Montréal) vendredi dernier, la judiciarisation des populations itinérantes est symptomatique du regard que porte notre société sur elle-même. Tant qu'elle distinguera citoyen et itinérant, qu'elle dépossèdera les individus marginalisés de leur identité, elle sera incapable de les aider réellement.



# PUBLICATION EN DROIT DE LA SANTÉ DE MCGILL

La Publication en droit de la santé de McGill est à **la recherche de textes** traitant du droit de la santé pour les inclure sur son site internet sous la rubrique "**contributions étudiantes**".

La Publication est issue d'une initiative étudiante ayant pris forme au cours de la dernière année et visant à créer une publication interdisciplinaire en ligne sur le droit de la santé. Notre objectif est de créer une ressource éducative de qualité à l'usage tant des académiciens et des étudiants que des professionnels du domaine de la santé et du public en général. La Publication, dont la parution est prévue pour janvier 2007, explorera les points de rencontre entre la santé et le droit avec un œil critique et innovateur, dans un cadre trans systémique. En publiant des textes de haut calibre révisés par des pairs et en créant une source d'information en ligne, elle offrira un forum permettant un débat sur les questions cruciales ayant trait à la santé, à la politique publique et à l'éthique en général.

Si vous avez déjà écrit un travail qui pourrait contribuer à la Publication et que vous êtes intéressés à ce qu'il figure sur le site internet, vous pouvez le faire parvenir à l'adresse e-mail suivante : **submissions.mhlp@mcgill.ca**. Les textes seront jugés selon leur pertinence, leur clarté et la qualité de la langue. Pour toutes questions:

**catherine.simard@mail.mcgill.ca.**

**La date limite est le 24 Février, 2006.**

# BELIVEAU AND CARDINAL LEGER

by Prof. William Tetley

The recent shift of Federal Government Ministers from Montreal to Quebec City and the need to name an unelected Minister for Montreal only underscores the historic rivalry between the two cities. For example, when in 1849 an English-speaking mob burned the Parliament building in Montreal, Parliament was moved alternately between Toronto and Quebec City to the delight of "les vrais Québécois" until 1857 when it was moved permanently to Bytown which became Ottawa.

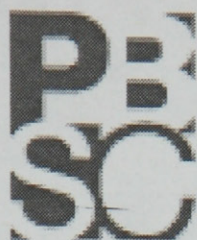
A more recent non-political example took place when Jean Béliveau played his first three professional years (1950-53) for the Quebec Aces. In January 1953 the Pope named Archbishop Paul-Emile Léger of Montreal as Cardinal (1952-1991) to the consternation of Quebec City residents. And in Montreal sporting circles it was suggested that Cardinal Léger should be traded for Béliveau. In the Fall of 1953 Béliveau, however, did join the Montreal Canadiens for a glorious 17 year career and eventually in 1965 the Pope named Archbishop Maurice Roy of Quebec City as Cardinal (1965-1985).

"Plus ça change..."

William Tetley  
Professor, McGill Law Faculty  
Minister in the Bourassa Cabinet 1970-1976

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## **JOB POSTING – PRO BONO STUDENT COORDINATOR**

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**FRIDAY, FEBRUARY 17<sup>th</sup>,  
2006**

### **PRO BONO PUBLICO ... FOR THE PUBLIC GOOD!**

Pro Bono Students Canada is a network of law students, law schools, community organizations and lawyers working together to provide legal services to disadvantaged individuals, groups, and organizations. PBSC facilitates these efforts by matching volunteer law students with non-profit agencies, government organizations, individuals, and other public interest groups, clinics, and programs to provide information and research under the supervision of a volunteer practicing legal professional.

Student Coordinator is responsible for administering and developing the Pro Bono Students Canada program at McGill. This includes recruiting and working with public interest organizations to develop student placements and refine projects, recruitment of lawyer supervisors, recruitment and training of students, matching and overseeing placements throughout the school year, maintaining a strong Faculty and provincial presence, and helping to develop new and exciting PBSC programs.

The position offers excellent experience in advocacy, networking opportunities with law firms, lawyers, and leaders in the public interest sector across the country, responsibility and an independent working environment, as well as a chance to contribute to building a public interest law movement in Canadian law schools.

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The position is **20 hours/week** during the summer (May to August) and **10 hours/week** during the school year (September to April 2007) at the McGill student wage scale (currently \$12/hour.)

**Preference will be given to students who participated as volunteers with the Pro Bono program during this past year, although all students, INCLUDING ALL FIRST YEARS are encouraged and welcome to apply.**

**Please submit a cover letter and resume to [probono.law@mcgill.ca](mailto:probono.law@mcgill.ca) no later than February 17<sup>th</sup>, 2006. Interviews will be held following Spring break.**

If you require further information, please contact Rachel Heft:  
**Phone : (514) 398-3855      Email : [probono.law@mcgill.ca](mailto:probono.law@mcgill.ca)**





*RE: My Assistant*

(this is an anagram: can you figure it out?)

*Come to Blakes Coffee House on Thursday Night.*

**Skit Nite 2006. Start Thinking.**



# VDAY POETRY

by Marguerite Tinawi (Law I)

A few days ago, my grandfather surprised me. When asked by my cousin whether he liked Baudelaire, he answered that he did indeed, and that as a matter of fact, he had long kept one of Baudelaire's poems in his wallet. That my grandfather, an all-time Voltaire fan, should deem Baudelaire readable was already shocking news...but that he'd keep a poem in his wallet... what a revelation!

What a strange, yet wonderful idea: to mix poetry with credit cards, bus passes, ID cards, drivers' licenses and bills... It's the merging of beauty with ugliness. Really. Just think of how ugly these words are - "L'utilisation de cette carte VISA\* est assujettie aux ententes et à la réglementation qui régissent son usage" - in comparison with the following :

Voici venir les temps où  
vibrant sur sa tige  
Chaque fleur s'évapore ainsi  
qu'un encensoir ;  
Les sons et les parfums tour-  
nent dans l'air du soir ;  
Valse mélancolique et lan-  
goureux vertige !

Chaque fleur s'évapore ainsi  
qu'un encensoir ;  
Le violon frémit comme un  
cœur qu'on afflige ;  
Valse mélancolique et lan-  
goureux vertige !  
Le ciel est triste et beau  
comme un grand reposoir.

Le violon frémit comme un  
cœur qu'on afflige,  
Un cœur tendre, qui hait le  
néant vaste et noir !  
Le ciel est triste et beau  
comme un grand reposoir ;

Le soleil s'est noyé dans son  
sang qui se fige.

Un cœur tendre, qui hait le  
néant vaste et noir,  
Du passé lumineux recueille  
tout vestige !

Le soleil s'est noyé dans son  
sang qui se fige...

Ton souvenir en moi luit  
comme un ostensor !

(Harmonie du soir, by  
Baudelaire)

Imagine all our cases written  
in verses... Perhaps that's the  
way they do it in Paradise.

Oops, is this hate speech  
against Christianity? Anyway,

I have to run, because my  
Memo impatiently awaits  
me...But before I go, I have a  
request for the Anglophone  
community: could you please  
educate this fellow  
(Francophone) student by  
sending her your favorite  
English poems? I admit, I am  
a total ignorant when it  
comes to English poetry.  
My e-mail address is: mar-  
guerite.tinawi@mail.mcgill.ca.  
And since it's Valentine Day,  
I'll leave you with this one:

Ne jamais la voir ni l'enten-  
dre,  
Ne jamais tout haut la nom-  
mer,  
Mais, fidèle, toujours l'atten-  
dre,  
Toujours l'aimer.

Ouvrir les bras et, las d'atten-  
dre,

Sur le néant les refermer,  
Mais encore, toujours les lui  
tendre,  
Toujours l'aimer.

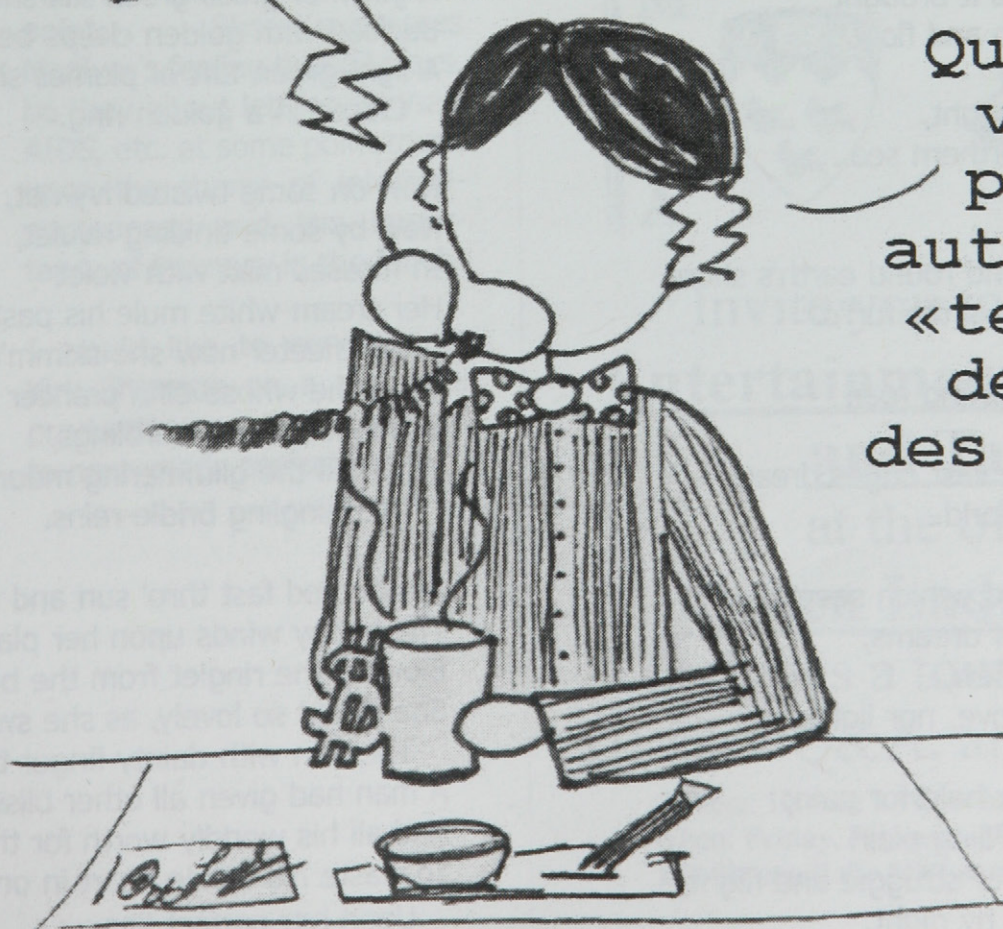
Ah ! Ne pouvoir que les lui  
tendre,  
Et dans les pleurs se con-  
sumer,  
Mais ces pleurs toujours les  
répandre,  
Toujours l'aimer.

Ne jamais la voir ni l'enten-  
dre,  
Ne jamais tout haut la nom-  
mer,  
Mais d'un amour toujours  
plus tendre  
Toujours l'aimer.

Soupir, René-François Sully  
Prudhomme (1839-1907)

Allô, America?  
Ici le général.  
Qu'est-ce qu'on fait  
avec nos missiles?

Que diriez-  
vous d'y  
poser des  
autocollants  
«tenir hors  
de portée  
des enfants»?





# POUR TOI, MARGUERITE

from an anonymous Quid Staffer

Here are a couple of great english poems: because we have some extra room this week, because you asked for them, because it is Valentines Day, because I am so happy that you are interested in english poetry, because I have great hopes that the rest of the faculty will read them and be inspired to do something romantic today and because I am secretly suspicious that, (despite what professors have been teaching me for many years) it is not law, science, governments, corporations or commerce that drives our world, but love. If there is one day to get distracted and think about that, I think it might be today. Enjoy :)

## Dover Beach

by Matthew Arnold

The sea is calm to-night.  
The tide is full, the moon lies fair  
Upon the straits; -on the French coast the light  
Gleams and is gone; the cliffs of England stand,  
Glimmering and vast, out in the tranquil bay.  
Come to the window, sweet is the night air!  
Only, from the long line of spray  
Where the sea meets the moon-blanch'd land,  
Listen! you hear the grating roar  
Of pebbles which the waves draw back, and fling,  
At their return, up the high strand,  
Begin, and cease, and then again begin,  
With tremulous cadence slow, and bring  
The eternal note of sadness in.  
Sophocles long ago  
Heard it on the Aegean, and it brought  
Into his mind the turbid ebb and flow  
Of human misery; we  
Find also in the sound a thought,  
Hearing it by this distant northern sea.

## The Sea of Faith

Was once, too, at the full, and round earth's shore  
Lay like the folds of a bright girdle furl'd.  
But now I only hear  
Its melancholy, long, withdrawing roar,  
Retreating, to the breath  
Of the night-wind, down the vast edges drear  
And naked shingles of the world.  
Ah, love, let us be true  
To one another! for the world, which seems  
To lie before us like a land of dreams,  
So various, so beautiful, so new,  
Hath really neither joy, nor love, nor light,

Nor certitude, nor peace, nor help for pain;  
And we are here as on a darkling plain  
Swept with confused alarms of struggle and flight,  
Where ignorant armies clash by night.

## Sir Launcelot and Queen Guinevere A Fragment

by Alfred, Lord Tennyson

Like souls that balance joy and pain,  
With tears and smiles from heaven again  
The maiden Spring upon the plain  
Came in a sunlit fall of rain.

In crystal vapor everywhere  
Blue isles of heaven laugh'd between,  
And far, in forest-deeps unseen,  
The topmost elm-tree gather'd green  
From draughts of balmy air.

Sometimes the linnet piped his song;  
Sometimes the throstle whistled strong;  
Sometimes the sparrowhawk, wheel'd along,  
Hush'd all the groves from fear of wrong;

By grassy capes with fuller sound  
In curves the yellowing river ran,  
And drooping chestnut-buds began  
To spread into the perfect fan,  
Above the teeming ground.

Then, in the boyhood of the year,  
Sir Launcelot and Queen Guinevere  
Rode thro' the coverts of the deer,  
With blissful treble ringing clear.

She seem'd a part of joyous Spring;  
A gown of grass-green silk she wore,  
Buckled with golden clasps before;  
A light-green tuft of plumes she bore  
Closed in a golden ring.

Now on some twisted ivy-net,  
Now by some tinkling rivulet,  
In mosses mixt with violet  
Her cream-white mule his pastern set;  
And fleeter now she skimm'd the plains  
Than she whose elfin prancer springs  
By night to eery warblings,  
When all the glimmering moorland rings  
With jingling bridle-reins.

As she fled fast thro' sun and shade,  
The happy winds upon her play'd,  
Blowing the ringlet from the braid.  
She look'd so lovely, as she sway'd

The rein with dainty finger-tips,  
A man had given all other bliss,  
And all his worldly worth for this,  
To waste his whole heart in one kiss  
Upon her perfect lips.



# PLAY REVIEW

by Joshua Krane (Law II)

The closing performance of *Strangers Among Us: Two Plays* by Daniel MacIvor was a resounding success for the cast and crew of *Actus Reus*. As the title suggests, the plays exposed the theme of interconnectedness, as the audience comes to discover how the characters of each story shared a special, but unspoken bond with each other.

The *Soldier Dreams*, a story about David, a dying gay man played by Ryan Anderson, carried the audience through a range of emotions, as it watched the decline of an adventurous spirit. David's two sisters, brother-in-law, and lover, played by Sarah Dobson, Claire Ezzedin, Kyle Gervais, and Seth Earn, stay with David by his bedside, but they are caught up in the petty disputes of family life. All four shared a special connection with David, through their playful and mischievous use of the sign alphabet; however, none of the characters saw past their own self-importance to realize that they shared this connection with the others. As a counter-story in the form of a memory of David's encounter with a German medical student, played by Kirk Shannon, the audience comes to realize that the other characters, so absorbed with their own lives and petty conflicts, fail to come to know David, whose life becomes defined by a single night of passion with the German. The story ends, as the German visits David and the others, and for a moment, we see David escape from his unconscious to say his last goodbyes to his family. David is quickly drawn

back into his unconscious, where he meets the German in heaven. MacIvor does not focus on the horror of dying (from AIDS), but tells us that we need to stop being so self-absorbed, otherwise will never come to really know the people around us.

*This Is a Play* - a satirical deconstructive of a "template" story, exposed this theme in a less subtle way. The audience burst into laughter when the three characters each pulled up their sleeves to reveal a lettuce tattoo and to discover that they are all part of the same immediate family. The stranger, also played by Seth Earn, and the niece, played by Alison Glaser, talk the audience through the acting of their parts, using dramatic adjectives and actor-speak as the "storyline" of the play unfolds. The narrator, played by Ewa Krajewska, provides the deconstruction of the play-making method in counterpoint. She expresses MacIvor's feeling that all plays, be they about lettuce, money, AIDS, etc. at some point touch upon the theme of interconnectedness and the importance of intimacy in the family.

I would like to congratulate Kirk Shannon on a masterful production and I look forward to next year's performance.

Je viens d'sortir d'un cours de con  
J'ai encore perdu l'syllabus  
J'sais pas si c'est l'stage à Boston  
Ou mon *laptop* qui pogne le plus  
Peace and love

A.E.D.

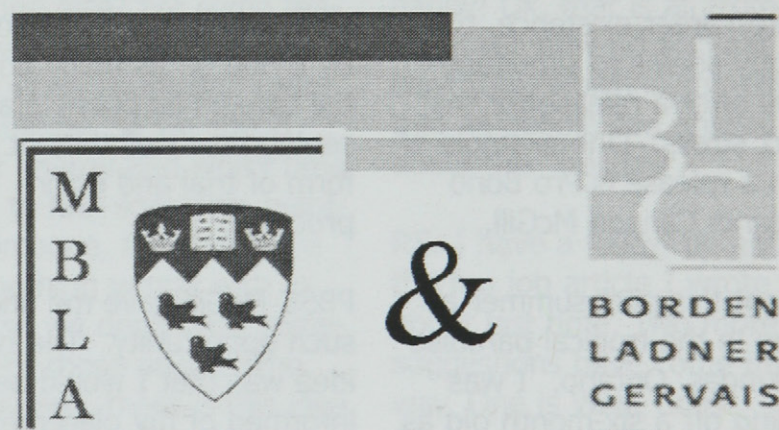
'faut *biller*,  
facturer.

Je chauffe un Chevy tout magané  
(mais ça ne durera pas longtemps)  
Des *Guid Novi* plein le coffre à gants  
Les justiciables ont envie de m'tuer  
Quand j'*flaunte* mon latin tout en m'souillant  
*Pax et amor*  
*Ex parte*  
*Coffeehouse*  
*Jus in re*

Je vais à l'université  
*blingue*  
La plus anglaise et la plus belle  
J'apprends à transsystémiser  
J'travaillerais pas au pic pis 'a pelle  
Peace and love  
L.S.D.\*  
Résumé  
Liberté

\* comme dans les dissidences Laskin,  
Spence, Dickson qu'alliez-vous penser!

Sur l'air du *Révolté* de Robert Charlebois



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Where: 1000 de La Gauchetière Street West, Suite 900  
When: Friday, February 10, 2006 11:45am - 2:00pm  
RSVP: email the MBLA at [mbla.law@mail.mcgill.ca](mailto:mbla.law@mail.mcgill.ca)



# 'PRO' PRO BONO

by Goran Marjanovic (Law I)

As a first year, setting foot inside the McGill Law Faculty can be an intimidating experience. Don't get me wrong. I think that all of the people at the Faculty are amazing. But that is exactly why the intimidation factor kicks in. Aside from being considerably more intelligent, and rich in experiences and accomplishments, most of my colleagues also had a pretty solid idea as to what they wanted out of life. In other words, many of the people that I have met since September are very motivated and career-oriented. Unfortunately, this is another thing I'm lagging behind on. I guess I still don't know what I want to be when I grow up.

While providing this source of agonizing intimidation and uncertainty about one's future/career/existence, this Faculty seems to simultaneously offer a release for that exact stress. One example of such a release is Pro Bono Students Canada McGill.

I spent this past summer at home in the tropical paradise of Dundas, Ontario. I was coming off a six-month gig as a manager of medical spa at a fancy outdoor mall in sunny San Diego, and a failed three-year relationship. In short, my future goals (and morals to some extent too) had been swept away by the Pacific undertow. Soon, however, I would be in Montreal, and things would be different.

I had received e-mails from PBSC McGill Director, Rachel Heft (Law II), over the course of the summer. Her correspondence fully explained the structure and function of the

organisation. Now if you're sitting there and thinking that you would like me to convey all the information now... too bad... it's not going to happen. However, if you are interested, please visit the PBSC McGill website (<http://www.law.mcgill.ca/students/clubs/probono/PBSCM-Eng.htm>). It is available in both French and English and fully informative, containing anything you might want to know about the organisation, and possibly more. To try to make a seemingly long story seem less long, I decided to partake in PBSC program at McGill. After all, "pro bono"... how bad could it be? While working with a personal injury lawyer over the summer, I realized the importance of practical experience in law. For confused people like me, the only way to figure out what career path to follow is by trying on as many potential careers as possible and seeing how well they fit (a form of trial and error process).

PBSC McGill gave me another such opportunity. The basic idea was that I would be informed of my placement in September and have initiated my participation no later than early October. Well, things did not run so smoothly for me at least. I was one of two students left initially placement-less (misplaced; displaced?). But Rachel Heft worketh in mysterious ways. After one of our colleagues defaulted, I was left with an incredible opportunity of working with the Canadian Human Rights Foundation (a.k.a. CHRF, a.k.a. Equitas). For more information on this organisation, please visit

[www.equitas.org](http://www.equitas.org). It is a non-profit NGO that is a "global leader in human rights education with over thirty-seven years experience." I came to a decision that this would be a great, new and eye-opening experience and I was extremely excited to begin. It seemed to be the perfect way of gaining insight into some less mainstream career paths available to a law school graduate. It also provided me with my first opportunity to be a part of a human rights organisation, which had always been one of my areas of interest.

I worked as a research assistant in the process of producing a training manual entitled "Combating Violence against Women in Central Asia". It was used at the Regional Consultation with the United Nations Special Rapporteur on Violence Against Women, held in Almaty, Kazakhstan (December 13-16, 2005). The four nations participating in this conference and training seminar were Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan. My job was to produce a 12-page research paper that focused on how these four nations were developing and implementing legislation and social services to combat the rampant violent abuse of women's rights that take place there. More specifically, I had to focus on the each of the nation's reports to the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) Committee. If you are interested in finding out more about CEDAW, please visit (<http://www.un.org/womenwatch/daw/cedaw/>). By examining the political, social, cultural, and economic status of these four nations, in light of their approach to human

rights issues, especially that of violence against women, it became apparent to me that these nations had a lot of reform to undergo before they can validly report to the UN that they respect and protect the rights of women. To some extent, Sacha Baron Cohen's portrayal of the Kazakh Borat, and especially his behaviour towards women (see: Ali G: Da Show - <http://www.hbo.com/alig/>), is not so far removed from the reality of the constant abuse that most central Asian women routinely face. For me, conducting this research had the effect of taking much of the humour away from at least the Borat bits on Da Ali G Show.

Fortunately, organisations such as the CHRF strive to train and educate public official and NGO representatives in such nations to make positive changes and uphold the ideal of respect for human rights. This pro bono experience left me fulfilled in a variety of ways. First of all, I felt like I put in an honest effort to help those in need. Although it destroyed my belief in the efficiency and effectiveness of international law and treaties, such as CEDAW, it showed me the inner workings of international human rights practices and the difficulties of upholding human rights in many developing nations. More practically speaking, this experience will not look bad on my resume, and the contacts that I have made along the way are also likely to bare fruit in the future. Most importantly it gave me insight into one of the many available career paths.

I still don't know what I want to be when I grow up. Everyday I'm around passion-



ate, motivated, and career-driven law students. However, the intimidation factor has receded. My pro bono experience has shown me that there are a variety of career options out there and that our lovely Faculty seems to do its best to provide us with opportunities to see what type of career fits us best. So if any of you out there feel uncertain about your career or your future, or even if you know exactly what you want to do but need more impressive credentials on your resume, I strongly recommend PBSC McGill experience. And keep in mind it's never a bad idea to lend a hand and apply your knowledge for the public good.

# THE SUNSHINE ARTICLE

by Alison Glaser (Law I)

First of all, I would like to sincerely apologize for the lack of sunshiny goodness last week. I would like to say that I was doing something horribly exciting, like a play, or ridiculously difficult, like a factum, but I wasn't. I just had an idea and it didn't work out and I couldn't get it together to think of something else. Sorry.

Anyway, moving on this week's topic: Valentine's day! Now, I am aware that pretty much almost all of you who just read that groaned. Possibly attempted to stab the paper. But please, continue reading. I would like to

address this visceral reaction to this oh so lovely Hallmark holiday.

The way I see it, no one is happy with Valentine's day. Those without someone are bitter and annoyed that their singleness is being singled out (so to speak) and those who are coupled get to feel guilty about feeling happy. Maybe they are not happy together and feel pressure to feel happy because it is Valentine's day (but hey single people, don't assume this is the case to make yourselves feel better, ok!).

All of this highlights a big problem, I think. Why is our happiness measured through someone else? For some reason, we have this idea that we must be coupled in order to be happy. So we spend lots of energy and worry time trying to find someone, wanting someone, thinking there is something wrong with us because we don't have someone. For those people who are coupled, there is this idea that you must therefore be happy. This, I think, leads to lots of problems as well. We have this idea that relationships should be easy, happy and fun, but they are not. They are hard and often tiring. They take work. People forget that sometimes, especially because we have been told through magazines and movies that once we are coupled everything should be hunky dory. So when things inevitably go wrong, we assume that the relationship is not working and break up

rather than work things through.

So, here is what I propose. Today, instead of being either depressed or guilty, think about all the things in your life that make you happy. Think about all the friends and family you have that love you and think you are great. Think about how you are an awesome student (and everyone here is!). Find one physical thing about yourself that you love and admire it. Think about a great accomplishment you have done. Think small. You don't need to have personally breasted orphans in Africa to feel good about yourself. Finishing a book you really wanted to read is an accomplishment. Making a nice meal is an accomplishment. Finishing a case is an accomplishment, even if it is a short one. Hey, getting out of bed when it is freezing out is an accomplishment. Don't sell yourself short people. Be happy! Ok, that is all from me. I will now go and eat chocolate, which is something that all people can enjoy about this "holiday".

P.S. I have a follow up about the fun job article I wrote about last time. Two more suggestions have come my way. One is West Coast Connection, which is a travel thing where you take teens to cool places. The website is <http://www.westcoastconnection.com/>.

Also, for Canadians with an interest in history, you can be a tour guide at Vimy Ridge in France. Check out <http://www.vac-acc.gc.ca/general/sub.cfm?source=memorials/ww1mem/vimy> and scroll to the bottom and click on "student guide program in France".

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Throughout the month of March, the McGill Alumni Association will be presenting workshops and seminars free of charge (unless otherwise indicated) to provide you with practical life skills that you won't learn in the classroom. Don't miss the keynote speaker, filmmaker Jake Eberts, BEng'62, at the Faculty Club on March 14!

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# TESTING EVERYONE'S PATIENCE

by Michael Lubetsky (Law I)

We are privileged, at the McGill University Faculty of Law, to have the opportunity to learn from some of the greatest legal minds in the country. However, academic brilliance does not automatically translate into test-making ability. I was a high-school teacher for four years, and administered well over five thousand tests, quizzes, and other "evaluation opportunities" during my tenure. I also took the time to learn some of the science of testing; my colleagues and I calculated our "KR-20" and "Cronbach Alpha" coefficients - two statistical devices that assess the fairness of a given test - and realised that creating fair tests requires much more than simply knowing the subject matter backward and forward. I cannot pretend to be an expert in the domain, but I can argue that in most of our classes, our exams exhibited shocking problems with fairness that undermined their usefulness as evaluation tools.

Before expounding the causes of the unfairness, let me say that I believe that all of our professors intend to create fair exams, and, in fact, invest considerable time and energy in designing and marking them. I would also like to apologise in advance to any professor who may be recognised from the examples I give in this essay. My goal is

not to embarrass or point fingers, but to help educate the Faculty on how to assess the fairness of a test, and thus facilitate a discussion on a topic of vital importance to us all.

The fairness of a test is measured in two ways: validity and reliability. Validity asks the question, "What skills/knowledge is this test measuring?" In our courses, a test should seek to measure: (a) our knowledge of the various legal rules and frameworks, (b) our ability to apply them to given scenarios, and (c) our ability to criticise and evaluate them. The relative weight of these three components should mirror the overall structure of the course. Moreover, the content of the exam should, as much as practical given the time constraints, seek to cover a broad and proportionate cross-section of the syllabus.

Most of the exams I took last December showed serious validity problems. One exam contained no fact pattern at all, even though the overwhelming majority of the reading and class discussion concerned the application of "the rules" in particular situations. There was thus a jarring disconnect between what we learnt to do in class and what we were called upon to do on the exam. Another exam required us to classify

fifteen different items as moveable and immovable - a task that took well over half the total exam time. Immobilisation represented less than 10% of the syllabus, and I would suggest that the professor could have meaningfully assessed our knowledge of the relevant codal provisions with three or four judiciously-chosen examples, leaving time to ask other questions related to a broader range of topics.

Cultural biases also compromise the validity of exams, since they may test knowledge outside of the target syllabus. One exam required us to classify a "football upright" as moveable or immovable; I know of at least one student who, coming from a culture where "football" means "soccer", had no idea what a football upright was. Knowledge of sports was not part of the syllabus and should not constitute a basis of evaluation.

Reliability asks the question, "How accurate is the exam's measurement of what it's supposed to measure." Two students with identical skills and understanding of a given body of knowledge should, in principle, receive identical grades. Unclear and ambiguous questions reduce a test's reliability, especially when the professor establishes a firm checklist of ideas that he or she deems essential to a "good" response. Two students may have identical understanding of the material, but will receive different grades simply because one, by happenstance, gets what the professor "really wants" while the other does not.

Insufficient time to properly answer an exam question also reduces its reliability, since a student may well know the material required for the "good" response but simply not be able to demonstrate that understanding in the time allotted. Such questions assess the ability to write quickly more than knowledge and understanding of the material.

Our exams last December exhibited numerous reliability problems. During one exam take-up session, one professor castigated our class for our widespread misunderstanding of a question, and sternly advised us to read exam questions "more carefully". Does the professor not realise that we are all literate, well-read, and educated people - some with post-graduate degrees - and perhaps the fault lay in the question and not us?

Another exam consisted entirely of a very broad fact pattern followed by one question, "Choose any four issues raised in class that related to this scenario and discuss." Pretty much everyone in the class wrote non-stop for an hour, and I suspect that in most cases, almost everything written down came up during the course and was somehow related to the fact pattern. How on earth does the professor decide who "deserves" an A- and who a C? Only afterwards did we discover the "must cover" topics - this particular professor expected us to go beyond "summary mode" and "think critically." However, I can easily think of another professor who would have probably preferred a comprehensive and well-



ordered compendium of the rules with their respective application to the case. Consequently, this "question" was not really assessing our knowledge and understanding of the course material, but rather our ability to read the professor's mind.

Reliability also requires a rational and consistent method to translate exam performance to a mark between A and F. The significant differences in grade distributions between different sections of the same classes suggest inconsistencies among the professors in this regard. The most glaring "translation problem" involved one exam with two purportedly equal questions, each graded separately. If a student's two grades differed by a single level - such as a C and a D, he or she would automatically receive the lower one. Although consistent, such a policy has no rational basis; there is no reason to believe that the lower grade is somehow more indicative of the students' understanding of the material than the higher one. In cases such as these, the professor should read both questions carefully and decide which grade, overall, is the more appropriate.

It is much easier to destroy than to create, and I do not want to criticise our professors without offering some constructive suggestions for improvement:

1. **Test Vetting:** A diverse committee of graduate students could do "dry runs" through the exams, outlining possible answers to compare with the professor's,

identifying unclear or ambiguous language, and identifying potential sources of cultural bias.

2. **Appeals:** The inability of first-year students to challenge or appeal their winter exams until summer flagrantly violates the intent of Section 14(b) of the McGill Charter of Student Rights. Professors should be willing to acknowledge that they make mistakes, and create procedures to identify and remedy them in a timely manner.

3. **Training:** I realise that our professors have many obligations, but given the high stakes involved for students, professors should not be assigning grades without proper training in test design.

4. **Lowering the Stakes:** All first-year courses should be ultimately graded pass-fail. Individual exams and essays would still be graded from A to F, and the results used for feedback purposes and perhaps to create a Dean's List. Since most of us do not get summer jobs after first year, the grades serve little purpose.

In the meantime, I remind my fellow students that we have the right to fair exams, a right that we should vigorously pursue through the various channels open to us.

# MCGILL LAW PERSONAL ADS

## WANTED:

White male seeks like-minded partners to form rhetorical community. Experience not necessary, articulation a must. Failure in small ways encouraged.

-M.A.

Group of humourless students seeks minor scandal to make a big deal out of. Knowledge of internet message boards an asset.

-McGill 1L

## LOST:

Memories of what it was actually like to be in first year.

-McGill 2, 3, 4L



# THE SQUARE: Law School in a Loveless Town

by Nicholas Dodd (Law I)

It is common knowledge that lawyers are the scum of the earth. Reflect on the first time you heard, and probably soon after retold, a joke about the moral bankruptcy of those in the legal profession. I was probably 12 or so the first time I disparaged the vocation - it was a great joke, could get a laugh out of any crowd. Over the years, I (and I am sure this applies to all of you as well) heard wisecrack after wisecrack playing on society's general aversion to - and I hate to put it this way - us. Ah, the heady times of youth and moral certitude ...

The reason I bring up this rather unpleasant social fact lies in a recent event which took place on the metro. Now before getting into the dirty details, I must admit that I had mostly forgotten the fact that lawyers tend to be at the unflattering end of many popular jibes. Perhaps it was the incredible dynamism, quality and intelligence of the people I've had the fortune to meet here that had led me into my pleasantly delusional 'everyone appreciates us and respects us' fantasy - then again it could have been the free booze and power suits that blinded me. At any rate, reality was brought forcefully home a few nights ago courtesy of one of Montreal's many homeless people. A fellow Quid correspondent and I (their name has been removed to protect their anonymity and spare them the shame of

being known to consort with me) were chatting amicably in the underground, waiting for a train. We were joined on our bench by a gentleman who, as was indicated by the medical bracelet hanging loosely off of his arm as well as by his own admission, had just that afternoon been released from the psychiatric hospital. He soon involved himself in our election-night discussion, which revolved around the potential of a conservative government (oh the idealism we had in those days!). When a lull in the conversation left us with nothing to say he reached into his bag and pulled out his large Carling Force 10 beer, advising us that he needed to prepare for the night ahead.

He cracked the beer, turned to us and said: "So what do you guys do?"

"Well", we replied, "we're law students."

There are no words that can do justice to the look of disgust that crossed our interlocutor's face at that moment. All he could muster in response to this statement was a low growl/gurgle, a dismissive wave of his hand, and a turned back. Feeling extremely chastised, all my companion and I could do was stare at each other's shoes and shuffle our feet, while our fellow bench-sitter began to take deep swigs from his wheat soda. Needless to say, we were both relieved when the train arrived to deliver us from the reality of our apparent leper-colony status.

If this were the only event that had occurred I might have been able to shake it off. Water off a duck's back and all that good stuff. However, not a week later, I was in a friend's kitchen while her roommate described with excruciating detail how incredibly boring her conversations with her lawyer were. Apparently she needs a few hours after each conversation just to be responsive to stimuli again. I won't say that the looks people gave me after this talk were leery - ok, there were definitely leery looks and my attempt at quietly shrinking into the corner was unfortunately unsuccessful.

So there you have it - you are being trained to be most people's worst nightmare. Imagine that dinner party a few years from now, meeting people for the first time where the inevitable first question is - 'So what do you do?' When your answer is 'I'm a lawyer' what will they think? Now there are those who feel Montreal is a town of romance, a veritable cornucopia of opportunities for those looking for their sweetheart - and then there are people like myself, who believe (and feel free to call me traditional) that relationships in this city seem to lack that aspect of dedication that is an essential element of love. Either way, the fact remains that there are a lot of single people in this city who have yet to find exactly what they're looking for. Perhaps this is a Valentine's Day call to arms to all you potential lovers out there to drop your inhibitions and go for the gold. After all, we're lawyers - if there's anyone who needs to work at finding love in a loveless city, it will be us.





# McGill Law Journal

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Justice Gomery is Chair of the Commission of Inquiry into the Sponsorship Program and Advertising Activities and a Justice of the Superior Court of Quebec. Prior to his appointment to the Superior Court in 1982, his legal practice included family and commercial law in Montreal.

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